

Cayman Islands Strata Corporation – Community Democracies

In a potential hammer blow to developer's seeking to retain ultimate ongoing control over the management and decisions of strata corporations registered against their developments, unit owners of Castaways' Cove in Grand Cayman's East End have won a landmark case that strata corporations are to "be run upon democratic lines".

1. Clappison (and another) v Proprietors Strata Plan 381 and others

Cayman has a long history of developers reserving themselves powers of absolute control over the management of the Strata Corporation until the earlier of the sale of all of the strata units or the expiry of a pre-determined period (typically no less than five years). Notwithstanding this well-established strata by-law formulation, it has been found that certain by-laws should be struck down as being ultra vires the powers and duties of the Strata Corporation because of inconsistency with the Strata Titles Registration Law (Revised) ("STRL").

The Hon. Justice Ingrid Mangatal re-iterated that the STRL was "designed to be a democratic, inclusive process, by and large enabling majority rule, and allowing the proprietors to make collective decisions" and that strata by-laws that are contrary to this in their construction are susceptible to being found to be invalid.

2. Facts

Action was brought by a unit owner of a strata complex known as Castaways' Cove in the East End of Grand Cayman, on behalf of multiple owners, ("the Plaintiffs") who felt that they were being charged unreasonably high strata fees by the developer of, Thompson Resorts Limited ("TRL"), who contracted his own company to manage Castaways' Cove. When the unit owners sought to reject the Strata Corporation's proposed annual budget plan, the developer relied on the rights reserved in favour of themselves under the existing registered strata by-laws.

Pursuant to the by-laws of Castaways' Cove TRL was provided with enhanced voting rights while it remained an owner of a unit in the strata complex or the resort continued. The by-law purported to give TRL virtual control of the Strata Corporation providing that "[a]t any general meeting the Developer will on a poll be entitled to such number of votes as is equal to all of the votes cast at the meeting by persons other than the Developer plus two additional votes.

The Plaintiffs argued in favour of the idea of a strata being a community democracy and resultantly claimed that the by-law in question offended against the underlying rationale of the scheme of the STRL, namely, the creation of a democratically elected body enabling each owner to participate in the process, with a democratic, inclusive process enabling majority rule.

The Court found that the relevant by-law was invalid and should be struck down as being ultra vires the powers and duties of the strata corporation because of inconsistency with the STRL. The by-laws were ordered to be amended and re-submitted for registration at Lands & Survey.

3. Relevance

The outcome of the case will no doubt cause a number of developers and strata unit owners to revisit the drafting of their

existing by-laws. Under particular scrutiny will be those registered Strata by-laws pursuant to which developers have conferred enhanced rights upon which may be said to offend the creation of a democratically elected body enabling each strata unit owner to participate in the process, with a democratic, inclusive process enabling majority rule.

The Court's finding, which remains subject to appeal, certainly empowers unit owners of some strata schemes to be masters of their own destinies, by challenging the validity of their registered strata by-laws, especially those who feel that their strata fees are artificially high as a result of the developer appointing an associated management company or otherwise managed particularly poorly by a developer who relies on enhanced rights under the registered strata by-laws to exert a continuing management presence.

Going forward, developers may wish to seek a legal health check of their precedent strata by-laws (notwithstanding how long they have been used and, as yet, unchallenged), strata unit owners may wish to seek legal advice in respect of challenges to registered strata by-laws to which their property is subject and buyer's advisors should be advising their purchasing clients of this legal development accordingly.

The information and expressions of opinion contained in this guide are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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